92-589

Supreme Court, U.S.
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CASE NO.:

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1992

R.E.J.,

Petitioner,

v.

L.R.E.,

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF WISCONSIN

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Is a state statute repugnant to the Constitution of the United States when the statute prescribes the wording of a "Waiver of First Appearance" form and the wording of the form induces out-of-state residents unwittingly to waive any objections to personal jurisdiction in that state?

PARTIES TO THE PROCEEDING

The parties to the proceedings before the Wisconsin Supreme Court were R.E.J. (respondent-appellant-petitioner below), L.R.E. (petitioner-respondent-respondent below) and the State of Wisconsin as a real party in interest.

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STATEMENT OF JURISDICTION

On June 2, 1992, the Supreme Court of Wisconsin denied a petition for review of the Wisconsin Appellate Court's interlocutory order which affirmed the Circuit Court's decision. The Circuit Court agreed with the family court that the filing of the "Waiver of First Appearance" form constituted an appearance.

This Court has jurisdiction to review decrees rendered by the highest court of a state pursuant to 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS AND STATUTES

FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION, SECTION 1.

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Wisconsin Statutes

(See Appendix pages 40-42)

Section 767.01(2)(c)

Section 767.455(5r)

Section 801.05

Section 801.07

Section 802.06(8)

UNITED STATES CODE

28 U.S.C. § 1257 (See Appendix p. 42-43).

STATEMENT OF THE CASE

A paternity action was commenced by L.R.E. naming R.E.J. as the father of K.J.E., born May 6, 1990 in the city of Elkhorn, County of Walworth, State of Wisconsin. (Appendix p.27).

After being assigned a public defender, R.E.J. brought April 15, 1991,

Motion to Dismiss for Lack of Personal Jurisdiction Pursuant to Wis. Stats. 767.01(2)(c), 801.05, 801.07. This motion was heard on April 18, 1991, before Family Court Commissioner Judith M. Stern. It was stipulated between the parties that there were no minimum contacts between R.E.J. and Wisconsin to allow the State to exercise personal jurisdiction over him. Similarly, the Circuit Court for Walworth County, the Honorable Robert J. Kennedy presiding, recognized in his September 10, 1991, Decision and Order that there was not enough evidence to establish R.E.J. had sufficient minimum contacts with the State of Wisconsin to subject him to personal jurisdiction. (Appendix p. 25). In May 7, 1991, Decision and Order, Commissioner Stern held that R.E.J.

waived any objections to personal jurisdiction because he submitted himself to the jurisdiction of the Circuit Court for Walworth County, Wisconsin when he filed the Waiver of First Appearance. (Appendix pp. 19-21).

Subsequently, R.E.J. filed May 21, 1991, Motion to Review the Decision of the Family Court Commissioner. This Motion was heard on June 17, 1991, before the Honorable Robert J. Kennedy, Circuit Court Judge for Walworth County, Wisconsin. In his September 10, 1991, Decision and Order, in affirming Family Court Commissioner Judith M. Stern's May 7, 1991, Decision and Order, held when R.E.J. filed the Waiver of First Appearance prior to making any objection to the court's jurisdiction, it resulted in R.E.J. waiving his right to object to

personal jurisdiction and submitted him to the jurisdiction of the court. (Appendix p. 23-26).

On September 16, 1991, R.E.J. petitioned the Court of Appeals of Wisconsin, District II for leave to appeal the September 10, 1991 order wherein the court held R.E.J. waived all objections to personal jurisdiction when he completed, signed, and returned the Waiver of First Appearance to the court. The petition was granted on October 18, 1991. In its March 18, 1992, Decision, the Court of Appeals affirmed Judge Robert J. Kennedy's September 10, 1991, Decision and Order. The Court of Appeals held that R.E.J. waived all objections to personal jurisdiction when he completed, signed, and returned the Waiver of First Appearance to the court because such

behavior amounted to an appearance and a response. (Appendix pp. 9-15).

On April 15, 1992, R.E.J. filed a petition for review of the Court of Appeals Decision with the Supreme Court of Wisconsin. On June 2, 1992, the Wisconsin Supreme Court denied the petition. (Appendix p. 1).

ARGUMENT FOR ALLOWANCE OF THE WRIT

THE LANGUAGE OF THE "WAIVER OF FIRST APPEARANCE FORM" VIOLATES DUE PROCESS REQUIREMENTS OF FAIR PLAY AND SUBSTANTIAL JUSTICE BY INDUCING A DEFENDANT TO SUBMIT TO THE JURISDICTION OF WISCONSIN WITHOUT SEEKING THE ADVICE OF A LAWYER

On May 6, 1990 a paternity action was commenced against R.E.J. In January of 1991, R.E.J. was served with a summons and a "Waiver of First Appearance" form. The first paragraph of the waiver form says "I understand that by signing this waiver and agreeing to its terms I am not required to appear at the time and place of the summons. If I do not sign this statement, I am required to appear at the time and place specified in the summons." The second paragraph says, in part, "If I fail to appear at any stage . . . the court will enter a default judgment finding me to be the father."

Wisconsin Statute Section 802.06(8) states that if objections to personal jurisdiction are not raised before any responsive pleadings, all jurisdictional objections are waived. The Wisconsin Appellate Court held that the filing of the waiver form is a responsive pleading. It is the contention of R.E.J. that the language in the form unfairly induces the reader into signing and filing the form.

"All assertions of state court jurisdiction must be evaluated according to the standards set forth in International Shoe and its progeny." Shaffer v. Heitner, 433 U.S. 186, 212 (1977).

"For new procedures, hitherto unknown, the Due Process Clause requires analysis to determine whether traditional notions of fair play and substantial

justice have been offended." Burnham v. Superior Court, 110 S. Ct. 2105, 2116 (1990).

A. The waiver indicates the choices given are exhaustive.

The first paragraph of the waiver form sounds as though the list of options is exhaustive: sign it and do not travel to Wisconsin, or do not sign it and travel to Wisconsin. A plain reading of the language indicates to a layman that if he does not sign the form he must travel to Wisconsin. The decision of the Wisconsin State Court of Appeals says, in effect, that by signing the form, the reader is required to travel to Wisconsin and submit to jurisdiction. Therefore, the Court of Appeals decision results in a defendant having to appear in Wisconsin no matter what he does.

The language found in the waiver is

prescribed by Wisconsin Statute Section 767.455(5r). In order for the statute to meet the requirements of the Due Process Clause, the extension of jurisdiction over the defendant must satisfy traditional notions of fair play and substantial justice. Burnham v. Superior Court of California, 110 S. Ct. 2105 at 2116 (1990); International Shoe v. Washington, 326 U.S. 310, 316 (1945).

The language of the form is unjust because it represents to a layman that he has only two choices. A person in Florida who does not want to travel has an easy time choosing the first option so he does not have to go to Wisconsin. It is not fair play to now require, as a result of this decision, the defendant to travel to Wisconsin for subsequent stages of the litigation. Therefore the statute

violates the standards of due process set by this Court, and consequently the statute violates the Constitution of the United States.

If the holding of the State Court of Appeals is accepted as correct, it is impossible to waive the first appearance without waiving all jurisdictional defects. However, the form does not inform the reader of a right to challenge jurisdiction nor does the form indicate that by filing the form, the reader waives any right to challenge jurisdiction, and in fact, forces him to submit to jurisdiction. This is so despite this Court's assertion that "a waiver is ordinarily an intentional relinquishment or abandonment of a known right or privilege." Johnson v. Zerbst, 304 U.S. 458, 464 (1938). This points

out yet another reason that the language in the form violates due process. R.E.J. did not know of a right to challenge personal jurisdiction, nor did he intentionally relinquish it.

B. The language of the waiver gives no indication that a lawyer might be needed.

The Wisconsin State Court of Appeals made the argument that ignorance of the law is no excuse, implying that if a layman does not understand a particular legal obligation, he has a duty to inform himself. However, in the instant case, the plain language of the waiver form gives a layman no indication that a lawyer might be helpful.

Firstly, the title of the form is "Waiver of First Appearance". The plain meaning of this is that by using the

form, the reader is not making an appearance. Secondly, the first paragraph of the waiver form indicates that the given choices are exhaustive. At this stage in the litigation, a layman would not think a lawyer is needed. A person can decide that he does not want to travel to Wisconsin without hiring a lawyer.

The language of the waiver form is particularly unfair and substantially unjust because confusion could easily be avoided. The most direct manner of avoiding confusion in this regard would be simply to inform the reader that he has the option of challenging jurisdiction. Other possibilities include amending the wording of the first paragraph so that the choices do not seem exhaustive. The mere possibility that a

third option exists will induce some laymen to consult with an attorney.

Finally, a much more fair way to present the choices in the waiver form would be to follow the first sentence in the first paragraph with the second paragraph. This would cause "signing th[e] waiver" to be buttressed with "appear[ing] at [future] stages" before the reader learns anything about what happens if he "do[es] not sign". This would make it very clear that even after the first appearance is waived, there are other stages in which he will be required to appear. This, also, would very likely cause a layman to seek the advice of a lawyer before doing anything.

C. Establishing an appearance by mail leaves the possibility that it will be an undue burden for the defendant to travel to the forum state.

The argument has been made that there is nothing wrong with the language of the waiver form because there is no requirement that a civil summons be accompanied by a statement informing the defendant that he has a right to object to personal jurisdiction. (Appendix p. 38). First of all, this argument ignores the fact that R.E.J. was served with something more than a summons. The misleading nature of the waiver form induced him into thinking a lawyer would not be needed.

More importantly, however, is that there is a major difference between failing to object to personal jurisdiction when one is present in court and failing to object to personal

jurisdiction by sending a letter in the mail. The critical due process analysis is to ensure a court does not unfairly require a defendant to travel to the forum state. Kulko v. California Superior Court, 436 U.S. 84, 97-98 (1978). If a defendant is physically present in court for his first appearance, it can be assumed that it is not a hardship for the defendant to appear. However, if filing a form by mail is construed to be an appearance, there is still a likelihood that making the trip is a burden on the defendant.

When minimum contacts are established, the contacts have to be purposeful in order to establish jurisdiction. Burger King v. Rudzewicz, 471 U.S. 462, 474 (1985); Hanson v. Denckla, 357 U.S. 235, 253 (1958). In

the instant case, it was stipulated that R.E.J. did not have the necessary minimum contacts to establish the personal jurisdiction of Wisconsin courts. Moreover, R.E.J. did not purposefully seek contact with Wisconsin. In fact, it was his attempt to avoid contact with Wisconsin that the Wisconsin Court of Appeals now claims established jurisdiction.

D. Without a review by this Court, many people from around the country may be unfairly required to appear in Wisconsin.

The Supreme Court of Wisconsin refused to review the decision of the Court of Appeals, despite the fact that there were two conflicting unpublished opinions rendered recently in the Court of Appeals of Wisconsin. Unless this Court reviews this matter, R.E.J. will have no relief from the unfair extension

of personal jurisdiction by the State of Wisconsin.

Moreover, in the instant case, the Wisconsin Court of Appeals recommended its decision for publication. Unless this Court reviews this matter, any person in any state in the country could unwittingly be subject to the jurisdiction of the Wisconsin court system.

CONCLUSION

It is well settled that in the context of personal jurisdiction, the constitution requires purposeful contacts, fair play, and intentional waivers of rights. However, the result of the Wisconsin Court of Appeals

decision is that it is acceptable for language in a waiver form to induce people unwittingly to waive the right to challenge personal jurisdiction.

Therefore, this Court should take the opportunity to review the "Waiver of First Appearance" form and the invocation of jurisdiction over R.E.J. Without a review by this court, R.E.J. and potentially many more people will be unfairly required to appear and defend an action in Wisconsin.

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Dated: August 31, 1992

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You are hereby notified that the Court has entered the following order:

No. 91-2212-FT In re the Paternity of K.H.E.: L.R.E. v. R.E.J., a/k/a H.J., Jr.
L.C.#90PA97

A petition for review pursuant to sec. 808.10, Stats., having been filed on behalf of respondent-appellant-petitioner R.E.J., a/k/a H.J., Jr., and considered by the court,

IT IS ORDERED that the petition for review is denied, without costs.

Marilyn L. Graves
Clerk of Supreme Court

COURT OF APPEALS
DECISION
DATED AND RELEASED

NOTICE

March 18, 1992

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals pursuant to s. 808.10 within 30 days hereof pursuant to Rule 809.62(1).

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 91-2212-FT

STATE OF WISCONSIN IN COURT OF APPEALS
DISTRICT II

In re the paternity of K.J.E.:

L.R.E.,

Petitioner-Respondent,

v.

R.E.J., a/k/a H.J., JR.,

Respondent-Appellant.

APPEAL from an order of the circuit court for Walworth County: ROBERT J. KENNEDY, Judge. *Affirmed.*

BROWN, J. The issue in this paternity case is whether R.E.J. waived his personal jurisdiction defense when he completed, signed and returned the form entitled "Waiver of First Appearance" to the circuit court prior to objecting to jurisdiction. The trial court ruled that he did, and we granted R.E.J.'s petition to review this nonfinal order because two unpublished decisions of the court of appeals had reached opposite conclusions on the issue. Because we hold that the returned waiver form was a responsive pleading and because Wisconsin law requires personal jurisdiction objections to be made before or at the time of the first responsive pleading, we affirm.

The child involved in this action was born in May 1990. On or about November 19, 1990, R.E.J. received a summons at his Florida home. The summons was issued

pursuant to sec. 767.455, Stats., and alleged paternity. Pursuant to sec. 767.455(5), the summons gave a date for a first court appearance and provided:

> If you do not appear, the court will enter a default judgment finding you to be the father.... if you plan to be represented by an attorney, you should contact the attorney prior to the court appearance listed above. If you are unable to afford an attorney, the court will appoint one for you. Appearance is not required if you complete the attached waiver of first appearance statement and send it to the court at least 10 days prior to the date of your scheduled appearance in this summons.

A "Waiver of First Appearance" form was attached to the summons as required by sec. 767.455(5r), Stats. It provided in part:

> 1. I understand that by signing this waiver and agreeing to its terms I am not required to appear at the time and place specified in the summons. If I do not sign this statement, I am required to appear at the time and place specified in the summons.

> 2. I understand that I will be notified by the court of all future stages in the proceeding and agree to appear at those stages. If I fail to appear at any stage, including a scheduled blood test, the court will enter a default judgment finding me to be the father.

The waiver form also contained a section where the respondent was required to check what plea he was entering. His options were to agree that he was the child's father, to deny that he was the child's father, or to agree that he was the child's father, subject to confirmation by a blood test. Section 767.455(5r).

R.E.J. checked the line indicating that he denied paternity and returned the "Waiver of First Appearance" form to the circuit court. Subsequently, counsel was appointed for him through the state public defender's office.

On April 15, 1991, R.E.J. filed a motion to dismiss for want of personal

jurisdiction, arguing that he lacked sufficient minimum contacts with Wisconsin to justify Wisconsin's exercise of long-arm jurisdiction. This motion was heard before a family court commissioner, who held that the filing of the waiver form was an overt act by which R.E.J. submitted himself to the Court's jurisdiction. She held that because R.E.J. filed the waiver form, entered a plea and sought relief from the requirement that he appear at the initial appearance date, he waived his objection to lack of personal jurisdiction.

R.E.J. filed a motion for review of the family court commissioner's decision in the trial court, and the trial court affirmed the family court commisioner. R.E.J. then filed the petition for leave to appeal.

Under the rules of civil procedure, a defense of lack of personal jurisdiction is waived if not raised in defendant's answer, in a motion filed before the answer, in a responsive pleading. Section 802.06(2) and (8)(a), Stats. In addition, case law holds that where an appearance is made and relief is sought on other matters, a defendant's objection to lack of personal jurisdiction is waived. Artis-Wergin v. Artis-Wergin, 151 Wis.2d 445, 452, 444 N.W.2d 750, 753 (Ct. App. 1989). In Artis-Wergen, this court held that when an attorney wrote to the trial court requesting that it stay proceedings, and did not reserve a jurisdictional objection, his action served as an appearance by the nonresident defendant and gave the trial court personal jurisdiction. Id., at 453, 444 N.W.2d at 753-54.

In this case, R.E.J. entered a plea on the "Waiver of First Appearance" form. His entry was a response to the directive given to him by the form demanding that he indicate what kind of plea he was entering. By denying paternity, he also indicated his agreement to undergo a blood test. The Walworth County Corporation Counsel, acting on behalf of the mother, asserts that these acts "answered directly the allegations made in the paternity action." Therefore, because it was responsive and made before any objection to personal jurisdiction, the objection is waived. The corporation counsel further asserts that if a letter sent to the court requesting an extension of time within which to answer constitutes an appearance, as was the case in Artis-Wergen, then certainly R.E.J.'s response waives jurisdiction as well.

R.E.J. argues that he did not make an appearance because, on its face, the "Waiver of First Appearance" form waives only an appearance. Based on this language, R.E.J. contends that a layperson could easily presume that returning the form does not constitute an appearance. He also relies on the language of the form providing that:

> I understand that by signing this waiver and agreeing to its terms that I am not required to appear at the time and place specified in the summons.

Based on the title and language of the form, R.E.J. argues that a plain reading of its language would indicate that the legislature did not intend the filing of the form to constitute an appearance.

He also argues that, at a minimum, the language is ambiguous. To resolve the ambiguity, he reads the popular or everday meaning of such phrases as "[a]ppearance

is not required" or "[y]ou need not appear" or "I am not required to appear" as saying to the layperson that "you don't have to show up, and if you don't show up, you have not made an appearance." R.E.J. observes that we must read statutes so as to avoid absurdity. He then reasons that if a person is told he can avoid making an appearance if he follows certain procedures, and then follows such procedures to avoid making that appearance, he has avoided or not made that appearance. To then use the answers required of him by the form as a basis for finding an appearance would be contrary to the language of the form and would be unreasonable.

The application of a statute to a particular set of facts is a question of law, and the court of appeals decides the issue independent of the trial court's

determination. Artis-Wergen, 151 Wis.2d at 452, 444 N.W.2d at 753. We hold that R.E.J. waived any objection to personal jurisdiction when he returned the form to the circuit court. First, the form required that he admit to or deny paternity in order to take advantage of not having to appear in person to answer the summons and complaint. Under our paternity statutes, the legislature has explicitly directed that this form be provided to a respondent, and if the respondent chooses to use the form, that answers to the form be made. As such, the form is a legislatively prescribed "responsive pleading." R.E.J.'s answers on the form were responsive to the complaint. Under sec. 802.06(8)(a), Stats., failure to object to personal jurisdiction prior to a responsive pleading constitutes a waiver.

Second, a plain meaning of the statute mandating the use of this form cannot be read as a legislative intention to use the form as a "nonappearance." Rather, the opposite is true. Had R.E.J. come in person before the court, he would have had to admit or deny paternity; had he denied paternity, he would have had to agree to submit to a blood test. The procedure providing for use of a form serves merely as a substitute to this first appearance. By this procedure, a putative father may elect to appear in person or appear by mail. Either way, he is notified of all his rights and defenses, the allegations made against him, and the financial objections he faces if found to be the father. By filing this form, he affirmatively states that he has read the form, that he understands it, and that if he fails to be present for any

further proceedings, a default judgment can be rendered against him. We agree with the corporation counsel that, on its face, the form prescribed by the legislature allows a first appearance to be made "out of court" as a matter of judicial economy and for the convenience of the respondent.

R.E.J. argues that holding as we do will condone what he calls a "sharp practice," whereby an unsuspecting, but reasonable, individual will comply with the procedures of the waiver, believing he is not making an appearance. This practice will be used to gain jurisdiction over putative fathers, such as himself, who ordinarily would not be subject to such jurisdiction. He questions whether the legislature intended to write law capitalizing on an out-of-state person's desire to avoid traveling to Wisconsin in

order to gain jurisdiction, otherwise unattainable.

In answer, we can only repeat the time-honored maxim that ignorance of the law is no excuse. The term "appearance" is generally used to signify an overt act by which one against whom a suit has been commenced submits himself to the court's jurisdiction. Artis-Wergen, 151 Wis.2d at 452, 444 N.W.2d at 753. By pleading to the court, albeit by mail, R.E.J. submitted himself to the court's jurisdiction. Thus, he is in no better position than a person served divorce papers, or an individual who has received a forfeiture citation, or a defendant in a personal injury action who affirmatively responds to the court prior to receiving legal advice.

By the Court.--Order affirmed.

Recommended for publication in the offical reports.

STATE OF WISCONSIN:CIRCUIT COURT:COUNTY OF WALWORTH:

In re the paternity of: K.J.

L.R.E.,

Mother, DECISION AND

and ORDER

R.E.J., File No. 90PA97

a/k/a H.J., JR.,

Respondent.

The above captioned matter came on before me on the 18th day of April 1991, pursuant to respondent's motion to dismiss for lack of personal jurisdiction. Attorney Paul Barrett appeared on behalf of the respondent. Attorney Mike Haggenjos appeared on behalf of the State of Wisconsin. L.R.E. made no appearance.

That based upon the arguments of counsel, the evidence presented, and the entire file herein, I hereby make the following:

FINDINGS

1. L.R.E. gave birth to the child, K.J.E., on May 6, 1990. Further that the birth weight of said child was 7 lbs. 1 1/2 oz. Further, the mother alleges that during the statutory conceptive period pursuant to Section 891.395 Wis. Stats. (July 9, 1989-September 7, 1989) that she had sexual relations with the above captioned respondent, R.E.J., Jr., a/k/a H.J., Jr. L.R.E. and the child, K.J.E. reside in Walworth County, WI.

2. On or about November 19, 1990, the respondent received a copy of the Summons and Petition in this matter by certified mail at (address omitted).

3. That on or about January 24, 1991, the respondent caused to be filed with the Clerk of Courts, Walworth County, a Waiver of First Appearance in the above captioned matter. In addition to waiving the requirement that he appear at the first or initial hearing in this matter, said Waiver of First Appearance entered a plea denying that he was the child's father.

By filing of this Waiver, the respondent availed himself of the rights set forth under Section 767.455 and enter a plea in the pending litigation. The filing of this waiver is an overt act by which the respondent submitted himself to the court's jurisdiction pursuant to McLaughlin v. Chicago, Milwaukee St. P. and Pa. Ry. Co., 23 Wis 2nd 592,594, 127 N W 2nd 813-815, 1964. A Waiver was filed, a plea entered, and relief sought

from the requirement to appear at the initial appearance date. Therefore, the lack of personal jurisdiction objection is waived. Lees v. DILHR, 49 Wis 2nd 491, 499, 182 N W 2d 245, 250 (1971) and Artis-Wergen, 151 Wis 2d 445, 444 N W 2d 750,753 (Ct. App. 1989).

4. Because respondent submitted himself to the jurisdiction of the circuit Court of Walworth County, Wisconsin by submission of the Waiver of First Appearance, the consitutional sufficiency of contacts with the State of Wisconsin pursuant to Sec. 767.01(2) is not reached.

Based upon the above findings and the entire file herein

IT IS HEREBY ORDERED that respondent's Motion to Dismiss for Lack of Personal Jurisdiction is hereby denied.

Dated this 7th day of May, 1991.

BY THE COURT:

signature

JUDITH M. STERN

Family Court

Commissioner

STATE OF WISCONSIN:CIRCUIT COURT:COUNTY OF WALWORTH:

In re the paternity of: K.J.

L.R.E.,

Mother, DECISION AND

and ORDER

R.E.J., File No. 90PA97

a/k/a H.J., JR.,

Respondent.

The above captioned matter having come before me on the 17th day of June 1991 on the respondent's motion to review the decision of the Family Court Commissioner, with the appearances being made by the State of Wisconsin by Assistant Corporation Counsel, Michael S. Haggenjos, and for the respondent, Attorney Paul Barrett, and following

arguments of counsel, and based upon the entire file herein and all proceddings heretofore had, I hereby make the following:

FINDINGS

1. That on May 7, 1991 the Family Court Commissioner rendered a Written Decision and Order dismissing the respondent's motion to dismiss the paternity action for lack of personal jurisdiction.

2. That the respondent filed a motion for judicial review pursuant Wis. Stats. Section 767.13(6), which motion was filed with the court on May 22, 1991.

3. That the court has reviewed the entire record, the entire file herein and the decision rendered by the Family Court Commissioner.

4. That after proper personal service was obtained on the respondent of

the Summons and Petition alleging paternity, the respondent filed on January 24, 1991 a Waiver of First Appearance, and that the Waiver of First Appearance included the respondent's plea denying that he is the father of the minor child, K.J.E.

5. That at no time prior to the filing of the Waiver of First Appearance, or at the time the Waiver of First Appearance was filed, did the respondent object to the court's exercising jurisdiction over the respondent's person.

6. That based upon the filing of the Waiver of First Appearance, and based upon the fact that prior to filing the Waiver of First Appearance the respondent failed to object to the personal jurisdiction of the court, the respondent has waived his right to make an objection to personal

jurisdiction, and thereby has submitted to the jurisdiction of this court.

7. That the trial court remanded the case to the Family Court Commissioner for an evidentiary hearing on the issue of whether the respondent has had sufficient minimum contacts with the State of Wisconsin for purposes of exercising personal jurisdiction over the respondent.

8. That upon subsequently being informed by the State that the State could not present evidence of sufficient minimum contacts with the State of Wisconsin, the court directed the Family Court Commissioner to cancel the evidentiary hearing on the issue of minimum contacts.

IT IS HEREBY ORDERED that:

1. The Decision and Order rendered by the Family Court Commissioner denying respondent's Motion to dismiss for lack of personal jurisdiction is affirmed.

2. This case is remanded to the Family Court Commissioner with instruction that the paternity action should proceed in the normal course.

Dated at Elkhorn, Wisconsin this 10th day of September, 1991.

BY THE COURT:

(signature)_____

Robert J. Kennedy

Circuit Court Judge

Branch I

cc: CSEA

Attorney Paul Barrett

STATE OF WISCONSIN:CIRCUIT COURT:COUNTY OF WALWORTH:

In re the paternity of: K.J.

L.R.E.,

Mother, SECOND AMENDED

and SUMMONS

R.E.J., File No. 90PA97

a/k/a H.J., JR.,

Respondent.

THE STATE OF WISCONSIN:

To the respondent,

You have been sued. L.R.E. claims that you are the father of a child, K.J.E., born on the 6th day of May, 1990, in the City of Elkhorn, County of Walworth, State of Wisconsin. You must appear to answer this claim of paternity. Your court appearance is:

DATE: March 21, 1991

TIME: 3:45 p.m.

BEFORE: Thomas F. Meyer, Assistant Family Court Commissioner

ROOM: County Boardroom, Basement Level

ADDRESS: Walworth County Courthouse, Elkhorn, WI 53121

If you do not appear, the court will enter a default judgment finding you to be the father. A default judgment will take effect 30 days after it is served on or mailed to you unless within those 30 days you present to the court or family court commissioner evidence of good cause for failure to appear. If you plan to be represented by an attorney, you should contact the attorney prior to the court appearance listed above. If you are unable to afford an attorney, the court

will appoint one for you. Appearance is not required if you complete the attached Waiver of First Appearance statement and send it to the court at least 10 days prior to the date of your scheduled appearance in this summons.

You are also notified that violation of the following criminal statute is punishable by a fine not to exceed $10,000.00 or imprisonment not to exceed two years, or both.

948.31 Interference with custody by parent or others.(1)

(a) In this subsection, "legal custodian of a child" means:

1. A parent or other person having legal custody of the child under an order or judgment in an action for divorce, legal separation, annulment, custody, paternity, guardianship or habeas corpus.

2. The department of health and social services or any person, county department under s. 46.215, 46.22, or 46.23 or licensed child welfare agency, if custody of the child has been transferred under ch. 48 to the department, person or agency.

(b) Except as provided under ch. 48, whoever intentionally causes a child to leave, take a child away or withholds a child for more than 12 hours beyond the court-approved visitation period from a legal custodian with intent to deprive the custodian of his or her custody rights without the consent of the custodian is guilty of a class E felony. This paragraph is not applicable if the court has entered an order authorizing the person to so take or withhold the child.

(2) Whoever causes a child to leave, takes a child away or withholds, a

child for more than 12 hours from the child's parents, or the child's mother in the case of a non-marital child where parents do not subsequently intermarry under s. 767.60, without the consent of the parents or the mother, is guilty of a Class E felony. This subsection is not applicable if custody has been granted by court order to the person taking or withholding the child.

(3) Any parent, or any person acting pursuant to directions from the parent, who does any of the following is guilty of a Class E felony:

(a) Intentionally conceals a child from the child's other parent.

(b) After being served with process in an action affecting the family but prior to the issuance of a temporary or final order determining custody rights to a child, takes the child or causes the child to

leave with intent to deprive the other parent of physical custody as defined in s. 822.02(9).

(c) After issuance of a temporary or final order specifying joint custody rights, takes a child from or causes a child to leave the other parent in violation of the custody order or withholds a child for more than 12 hours beyond the court-approved visitation period.

DATED this 21st day of January, 1991.

BY:

signature_____

Dianne M. Soffa

Walworth County Assistant

Corporation Counsel

ADDRESS:

Walworth County Child Support Enforcement Agency

Walworth County Courthouse, Room 108

Post Office Box 1001

Elkhorn, WI 53121

(414) 741-4315

cc: CSEA

Mother

STATE OF WISCONSIN:CIRCUIT COURT:COUNTY OF WALWORTH:

In re the paternity of: K.J.

L.R.E.,

Mother, WAIVER OF FIRST

and APPEARANCE

R.E.J., File No. 90PA97

a/k/a H.J., JR.,

Respondent.

---

1. I understand that by signing this waiver and agreeing to its terms, I am not required to appear at the time and place specified in the summons. If I do not sign this statement, I am required to appear at the time and place specified in the summons.

2. I understand that I will be notified by the court by mail of all future stages

in the proceeding and agree to appear at those stages. If I fail to apear at any stage, including a scheduled blood test, the court will enter a default judgment finding me to be the father. A default judgment will take effect 10 days after it is served on or mailed to me, unless within those 10 days I present to the court or a family court commissioner evidence of good cause for my failure to appear or my failure to appear to have undergone a blood test.

3. I enter the following plea (check only one):

_____ I agree that I am the child's father

XXXXXX I deny that I am the child's father (you will be advised of the place, date and time of the blood draw)

_____ I agree that I am the child's father, subject to confirmation by a blood test (you will be advised of the place, date and time of the blood draw)

If I enter a plea agreeing that I am the child's father, a judgment of paternity will be entered against me. If I enter a plea denying that I am the child's father or a plea agreeing that I am the child's father, subject to a blood test, I agree to undergo a blood test.

4. I have read the summons and the notice or have had them read to me.

5. This waiver of first appearance statement is valid only if it is delivered to the court on or before .

6. I will keep the clerk of court and the child support unit informed of my address

at all times. The following is my current address:

(omitted)

street address and apartment number

(omitted)

City State Zip Code

(omitted)

Phone Number

(omitted)

Social Security Number

12/12/90

Date

(omitted)

Signature of Respondent

SUBSCRIBED AND SWORN to before me this 26th day of December, 1990.

(omitted)

Notary Public, _____ County

My Commission expires _____.

(Your signature is to be witnessed by a notary public or signed in the Walworth

. . .

THE COURT:

Okay. In my personal opinion, where one is sued for a million dollars and there is a summons and complaint. That is just as important, quite frankly, as your type of paternity case. Paternity is very important. It determines whether you are the father of a child or not, but a million dollar case can put you back a long ways, just as the determination of whether you're the father of a child or not. Yet, nowhere in a civil summons that involves that kind of potential liability has the court ever engrafted a requirement that the party be advised that:

> "Hey, stop a second, you have been served with this summons, and if you object to the personal jurisdiction of the Court, you can do so."

It doesn't tell him that -- or her that. And because is doesn't tell them, I find the same grounds here for not

requiring the State to tell them. I think that they are at their own risk to know the law.

When they receive it, if they're going to object to personal jurisdiction, they must do so. If the document that should have been an objection to the jurisdiction of this Court and asking for a hearing . . .

767.01 Jurisdiction

(2) In an action to establish paternity or to establish or enforce a child support obligation, in regard to a child who is the subject of the action, a person is subject to the jurisdiction of the courts of this state if any of the following circumstances exists: . . .
(c) The affected child resides in this state.

767.455 Summons. . . .
(5r) WAIVER OF FIRST APPEARANCE. The waiver of first appearance statement shall be attached to the summons. The waiver of first appearance stateement shall be in boldface type and substantially the following form:

WAIVER OF FIRST APPEARANCE

1. I understand that by signing and agreeing to its terms I am not required to appear at the time and place specified in the summons. If I do not sign this statement I am required to appear at the time and place specified in the summons.
2. I understand that I will be notified by the court of all future stages in the proceeding and agree to appear at those stages. If I fail to appear at any stage, including a scheduled blood test, the court will enter a default judgment finding me to be the father. A default judgment will take effect 30 days after it is served on or mailed to me, unless within those 30 days I present to the court or a family court commissioner evidence of good cause for my failure to appear or my failure to have undergone a blood test.
3. I enter the following plea (check only one):

... I agree that I am the child's father.
... I deny that I am the child's father.
... I agree that I am the child's father, subject to confirmation by a blood test.

If I enter a plea agreeing that I am the child's father, a judgment of paternity will be entered against me. If I enter a plea denying that I am the child's father or a plea agreeing that I am the child's father, subject to a blood test, I agree to undergo a blood test.

4. I have read the summons and the notice or have had them read to me.

5. This waiver of first appearance statement is valid only if it is delivered to the court on or before ....

6. I will keep the clerk of court informed of my address at all times. The following is my current address:

.....
Street address and apartment number

.....
City State Zip Code

.....
Signature of Respondent

.....
Date

801.05 Personal jurisdiction, grounds for generally. A court of this state having jurisdiction of the subject matter has jurisdiction over a person served in an action pursuant to s. 801.11 under any of the following circumstances: . . .
(2) SPECIAL JURISDICTION STATUTES. In any action which may be brought under statutes of this state that specifically confer grounds for personal jurisdiction over the defendant.

802.06 . . .
(8) WAIVER OF PRESERVATION OF CERTAIN DEFENSES. (a) A defense of lack of jurisdiction over the person or the property, insufficency of process, untimeliness or insufficiency of service of process or another action pending between the same parties for the same cause is waived only 1) if it is omitted from a motion in the circumstances described in sub. (7), or 2) if it is neither made by motion under this section or included in a responsive pleading.

s. 1257. State Courts; appeal; certiorari
(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question of where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Contitution or the treaties or statutes of, or any commission

held or authority exercised under, the United States.

(b) For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.